

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

OP.No. 14338 of 2002(F)

PETITIONER:

M/S.AJANTHA ELECTRICALS AND
P.H.EQUIPMENTS, PUTHENCHANTHA, M.G.ROAD,
THIRUVANANTHAPURAM, REPRESENTED BY ITS PROPRIETOR.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

RESPONDENTS:

1. THE AIRPORT AUTHORITY OF INDIA,
NATIONAL AIRPORT DIVISION, THIRUVANANTHAPURAM
INTERNATIONAL AIRPORT, THIRUVANANTHAPURAM,
REPRESENTED BY THE AIRPORT OFFICER.
2. THE ASST.PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION, REGIONAL
OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.
3. THE EMPLOYEES PROVIDENT FUND APPELLATE
TRIBUNAL, 7TH FLOOR, 60, SKYLARK BUILDING,
NEHRU PLACE, NEW DELHI-110 019.

BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.
SRI.K.L.NARASIMHAN
SRI.V.SANTHARAM
SRI.K.G.MOHANDAS PAI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 04/01/2007, THE COURT ON THE SAME DAY, DELIVERED THE
FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF LETTER DT. 10-10-1996.

EXT.P2 NOTICE DT. 21-1-1997.

EXT.P3 LETTER DT. 19-2-1997.

EXT.P4 NOTICE RECEIVED FROM R2.

EXT.P5 NOTICE DT. 21-8-1997.

EXT.P6 NOTICE DT. 12-3-1997.

EXT.P7 ORDER DT. 7-5-1997.

EXT.P8 PROSECUTION NOTICE .

EXT.P9 LETTER DT. 3-6-1997.

RESPONDENTS' EXHIBITS:

EXT.R1(a) TRUE COPY OF AGREEMENT DT. 25-1-1996.

EXT.R1(b) JUDGMENT IN O.P.NO.9123/1999 DT. 6-4-1999.

EXT.R1(c) CHEQUE DATED 9-4-1997.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 14338 of 2002

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Dated this, the 4th January, 2007.

J U D G M E N T

Petitioner is a contractor executing some electrical works for the 1st respondent-Airport Authority of India. The petitioner is aggrieved by Exts. P14 and P16 orders which are the orders of the original authority and the appellate authority under the Employees Provident Funds and Miscellaneous Provisions Act holding that the petitioner is an establishment liable to be covered under the Act. The petitioner challenges the same on two grounds. The first is that since the 1st respondent-authority is an establishment exempted from the purview of Section 16 of the Act, the petitioner who is executing works in an exempted establishment is also not liable to be covered under the Act. The second contention is that since the petitioner is not employing the required number of workers for coverage under the Act, the orders of the lower authorities holding that the petitioner's establishment is liable to be covered under the Act is unsustainable.

2. I am of opinion that these contentions need not be considered at all in this case because as revealed from the impugned orders, the petitioner had earlier suffered an order under Section 7A of the Act holding that the petitioner is liable to be covered under the Act. That order was challenged under the erstwhile Section 19A of the Act, which was later repealed by amendment of the Act as a consequence of which, that petition was forwarded to the Employees Provident Fund Appellate Tribunal, who also dismissed the petition. The petitioner has not chosen to challenge those orders in any proceedings known to law. Therefore, the question of coverage of the petitioner under the Act has already become final and he cannot now rake up the same again in fresh proceedings under Section 7A. That being so, even without going into the contentions raised in this original petition, the original petition is liable to be dismissed.

3. Even otherwise, I do not find any merit in the contentions of the petitioner. The 1st respondent-authority is exempted from the provisions of the Act only because the employees of the 1st respondent are getting social insurance benefits equivalent to the benefits under the Provident Funds Act under their own rules. The petitioner has no case that the petitioner's employees have any kind of such social insurance by way of provident fund or otherwise. That being so, even though the 1st respondent is exempted from the purview of the Act, the petitioner cannot claim the benefit of that exemption in so far as its employees are not enjoying any of the benefits that are being enjoyed by the employees of the 1st respondent similar to the benefits provided under the Act.

4. Regarding the second contention, the petitioner has not chosen to raise such a contention before the 7A authority to the effect that the petitioner's establishment is not liable to be covered under the Act since the establishment does not employ the required number of employees required for coverage under the Act. No such contention has also been raised before the appellate authority. That being so, the petitioner cannot now raise such a contention in this original petition.

For the above reasons, I do not find any merit in the original petition and accordingly the same is dismissed.

Sd/- S. Siri Jagan, Judge.

Tds/